CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60029 of 2016

[Arising out of Order-in-Original No. LUD-EXCUS-000-COM-014-15-16 dated 20.01.2016 passed by the Principal Commissioner of CE & ST, Ludhiana]

Dev Raj Hi Tech Machines Ltd ......**Appellant**
Industrial Area, Ferozepur City,
Ferozepur, Punjab 152002

VERSUS

Principal Commissioner of Central Excise and Service Tax, Ludhiana ......**Respondent**
GST Bhawan, F Block, Rishi Nagar,
Ludhiana, Punjab 141001

APPEARANCE:

Mr. Vikrant Kackria, Advocate for the Appellant

Mr. Goverdhan Dass Bansal, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60923/2025

DATE OF HEARING: 22.07.2025
DATE OF DECISION: 01.08.2025

S. S. GARG:

The present appeal is directed against impugned order dated 20.01.2016 passed by the Principal Commissioner of Central Excise and Service Tax, Ludhiana, whereby the learned Principal Commissioner has confirmed the demand of central excise duty under

Section 11A(4) of the Central Excise Act, 1944 read with proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944 along with interest under Section 11AA of the Act read with erstwhile Section 11AB of the Act and also imposed under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002.

2. Briefly stated facts of the present case are that the appellant is engaged in manufacture of rice mill machinery including elevators, conveyors, parboiling and drying plants and parts & accessories thereof. According to the appellant, all these items are falling under Chapter Heading 8437 of the Central Excise Tariff Act, 1985; but the department took the view that elevators, conveyors, parboiling and drying plants and their parts & accessories manufactured by the appellant are different items from rice mill machinery as envisaged in Chapter Heading 8437 and it was alleged by the department that the items namely elevators and conveyors are classifiable under Chapter Heading 8428 and the items namely parboiling and drying plants are classifiable under Chapter Heading 8419 of the Central Excise Tariff Act, 1985. On these allegations, a SCN dated 10.09.2014 was issued to the appellant proposing demand of central excise duty along with interest and penalty. The appellant filed reply to the SCN and submitted that the on the basis of the Circular No. 924/14/2010-CX dated 19.05.2010 of the CBEC, the said items were held to be classifiable under Chapter Heading 8437 which were chargeable to nil rate of duty. After following the due process, the learned Adjudicating

Authority confirmed the demand, interest and penalty as proposed in the SCN. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law and binding judicial precedents.

4.1 The learned Counsel further submits that the issue regarding the classification of elevators and conveyors used in rice mill, has already been decided by the Tribunal in favour of the asssessee classifying the same under Chapter Heading 8437 in following cases and the said decisions of the Tribunal have been upheld by the Hon'ble Apex Court:

- Alpsco Graintech Pvt Ltd vs. CCE, Chandigarh – 2019 (365) ELT 944 (Tri. Chan.)

  upheld by the Supreme Court in CCE vs. Alpsco Graintech Pvt Ltd – 2019 (368) ELT A225 (SC)
- Sona Foods India vs. CCE, Ghaziabad – 2019 (368) ELT 162 (Tri. All.)

  upheld by the Supreme Court in CCE vs. Sona Foods India – 2019 (368) ELT A50 (SC)
- Annapurna Agronics Machinery P Ltd vs. CCE, Sonepat – 2020 (371) ELT 911 (Tri. Chan.)

  upheld by the Supreme Court in CCE vs. Annapurna Agronics Machinery P Ltd – 2020 (371) ELT A302 (SC)

He further submits that since this issue is no more *res integra* and covered by the decisions of Hon'ble Supreme Court (cited supra) on merits, therefore, no demand merits to be sustained on elevators and conveyors. The said decisions of the Hon'ble Supreme Court have been accepted by the department and subsequently, in the case of Annapurna Agronics Machinery Pvt Ltd and others, the Principal Commissioner of CGST, Delhi North vide his Order-in-Original No. 24/C.Ex./Pr.Commr./M.M.G./D.N./2023-24 dated 22.03.2024, has dropped the demand.

4.2 The learned Counsel further submits that the issue regarding the classification of parboiling and drying plants has also been decided by the Tribunal; earlier decided against the assessee by the Larger Bench of the Tribunal in the case of Jyoti Sales Corporation vs. CCE, Panchkula – 2016 (341) ELT 328 (Tri. LB) wherein it has been held that parboiling and dryer plants would be classified under Chapter Heading 8419; subsequently, the issue was referred to the Division Bench and was decided in favour of the assessee in the case of Jyoti Sales Corporation vs. CCE, Panchkula – 2020 (374) ELT 936 (Tri. Chan.) wherein it was held that so long the circular of the department dated 15.05.2014 was in operation, the tax cannot be demanded as there was circular of the department and hence no demand of tax can be confirmed for period prior to 15.05.2014. Against the said order of the Division Bench of the Tribunal, the appeal of the department has been dismissed on monetary limit by the Hon'ble Supreme Court of India reported as (2023) 10 Centax 225 (SC). He further submits that the said decision of the Division Bench of the Tribunal has been followed by the Ahmedabad Bench of the Tribunal in the case of Rippen Radiators & Heat Exchangers Pvt

Ltd vs. CCE & ST, Ahmedabad-II vide Final Order Nos. 11676-11677/2023 dated 10.08.2023 in Excise Appeal Nos. 10291 & 10292 of 2015. He further submits that similar view has also been taken by the High Court/Supreme Court in the following cases wherein it has been held that the circulars of the department are binding on departmental authorities and no view contrary to the circulars can be taken by the department:

- Paper Products Ltd vs. CCE – 1999 (112) ELT 765 (SC)
- CCE, Vadodara vs. Dhiren Chemicals Industries – 2002 (139) ELT 3 (SC)
- CCE vs. Malwa Industries Ltd – 2010 (251) ELT 32 (P&H)
- Suchitra Components Ltd vs. CCE, Guntur – 2007 (208) ELT 321 (SC)

He further submits that this issue is no more *res integra* as decided by the various decisions cited supra.

4.3 As regards the invocation of extended period of limitation, the learned Counsel submits that extended period cannot be invoked as there is no fraud, willful mis-statement and suppression of facts on the part of the appellant. He further submits that when a combined SCN is issued for both normal and extended period and the extended period is not held sustainable then the entire SCN has to be quashed. In this regard, he relies on the following cases:

- Infinity Infotech Parks Ltd vs. Union of India – 2014 (36) STR 37 (Cal.)
- Shyam Spectra Pvt Ltd vs. CST, Delhi-II – Final Order No. 56196/2024 dated 31.07.2024 CESTAT DELHI
- M/s R. S. Financial Services vs. CCE, Chandigarh-II – Final Order No. 60489/2024 dated 27.08.2024 CESTAT CHANDIGARH

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, we find that the issue regarding the classification of elevators and conveyors is no more *res integra* as having been decided by the Tribunal in various cases holding that the same to fall under Chapter Heading 8437 and the decisions of the Tribunal have been upheld by the Hon'ble Apex Court (as cited above in *para 4.1*). We also find that the decisions of Hon'ble Apex Court have been accepted by the department and demand for the subsequent period has been dropped by the Principal Commissioner of CGST, Delhi North vide **Order-in-Original No. 24/C.Ex./Pr.Commr./M.M.G./D.N./2023-24 dated 22.03.2024** in the case of Annapurna Agronics Machinery Pvt Ltd and others. Therefore, by following ratios of the said decisions, we hold that classification of elevators and conveyors falls under Chapter Heading 8437 of the Central Excise Tariff Act, 1985 which is chargeable to nil rate of duty during the relevant period.

7. As the issue regarding classification of parboiling and drying plants is concerned, we find that the Division Bench of the Tribunal in the case of **Jyoti Sales Corporation** (supra) has held that these items are classifiable under Chapter Heading 8437. We also find that the appeal of the department against the Tribunal's decision, has been dismissed on monetary limit by the Hon'ble Apex Court. We also find that the Tribunal's decision in the case of **Jyoti Sales**

Corporation (supra) has been followed by the Ahmedabad Bench of the Tribunal in the case of **Rippen Radiators & Heat Exchangers Pvt Ltd** (supra), wherein the Tribunal has observed as under:

> "**5.** It is a settled legal position that the Board Circular issued by CBEC/CBIC is binding on the departmental officers. In view of this settled legal position, firstly, the show cause notice ought not to have been issued by following the binding Circular dated 19.05.2010. Therefore, the issuance of show cause notice itself is illegal and incorrect. Secondly, during the relevant period 2011-12 to 2013-14, Circular dated 19.05.2010 (supra) was in force according to which the goods were classifiable under heading 8437. It is settled position under various Hon'ble Supreme Court Judgments that any Circular which is beneficial to the assessee should be given effect irrespective to the different correct legal position of classification. Therefore, even though subsequently the Larger Bench has decided the classification under heading 8419 but by virtue of Circular dated 19.05.2010 during the currency of the said Circular the goods is classifiable under heading 8437 and consequently no duty could have been demanded on this very issue. This Tribunal, in the case of Jyoti Sales Corporation (supra) held as under:-
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> > *………….*
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> > *…………*
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> > *8. In view of the above discussions, as the circular dated 19-5-2010 was in operation during the period in question, therefore, we hold that the said circular is binding on the departmental officers.*
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> > *9. Further, we take a note of the fact that in the case of Auro Weaving Mills (supra) the Hon'ble Himachal Pradesh High Court has also observed that the Board Circulars are binding on department so long as they remain in operation and not open to department raise contention contrary to such circulars.*
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> > *10. We also take a note of the fact that in the case of Malwa Industries Ltd. (supra) the Hon'ble*

Punjab and Haryana High Court has observed that the Revenue is precluded from challenging the correctness of the circular even on the ground of same being inconsistent with statutory provisions. It goes further to limit the right of the Revenue to file an appeal against the correctness of the binding nature of the circular. Therefore, there is no escape from the conclusion that the circular is binding on the Revenue.

11. Further, we take note of the fact that in the case of Suchitra Components Ltd. (supra) as held that the beneficial circulars to be applied retrospectively while oppressive circular applicable prospectively. Admittedly, the circular dated 15-5-2014 is against the appellants, therefore, the same is to be operative w.e.f. 15-5-2014 and for the period prior to 15-5-2014, the appellants are entitled for the benefit of the Circular dated 19-5-2010 by classifying their products under Chapter Heading No. 8437 of CETA.

12. We also take a note of the fact that the inputs used in manufacturing of final product are dutiable on which the appellant has discharged their duty liability. The said Cenvat credit is also available to the appellant if same is taken into consideration then duty liability calculated by the adjudicating authority is not correct.

13. In view of above analysis, we hold that for the period prior to 15-5-2014 if the appellants have classified their products in question under Chapter Heading No. 8437 of CETA, no demand is sustainable in terms of the Circular No. 924/14/2010-CX., dated 19- 5-2010.

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From the above decision it can be seen that even though the Larger Bench has decided the merits of classification under heading 8419 but despite that the issue that when the Board Circular was in force which classified the goods under heading 8437 shall prevail as per various Supreme Court decisions discussed by the Larger Bench in the aforesaid decision.”

Therefore, by following ratios of the said decisions, we hold that the items namely parboiling and drying plants are classifiable under Chapter Heading 8437 of the Central Excise Tariff Act, 1985.

8. As the issue regarding invocation of extended period is concerned, we find that there was contrary view expressed by two Division Benches of the Tribunal regarding the items in question and a Larger Bench was constituted which itself shows that there was no suppression of facts on the part of the appellant. Therefore, invoking the extended period of limitation in the facts and circumstances of the case, is not justified as the department has failed to prove that there was any fraud, willful mis-statement and suppression of facts on the part of the appellant. Further, by following the ratios of the decision of Hon'ble Calcutta High Court in the case of **Infinity Infotech Parks Ltd** (supra) as well as decisions of the Tribunal in the cases of **Shyam Spectra Pvt Ltd** (supra) and **M/s R. S. Financial Services** (supra), we hold that the entire demand is barred by limitation.

9. In view of our discussion above, we are of the considered opinion that the impugned order is not sustainable on merits as well as on limitation, therefore, we set aside the same by allowing the appeal of the appellant.

(Order pronounced in the open court on 01.08.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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